

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2014020328

ORDER GRANTING MOTION TO
DISMISS ISSUE

On February 7, 2014, Parents on behalf of Student (Student) filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings (OAH) naming the Irvine Unified School District (Irvine). Student's complaint contains 14 issues. Out of the 14 issues in Student's complaint, 13 allege violations under the Individuals with Disabilities Education Act (IDEA), but one - Issue 13, alleges violations under Title V of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq. (Section 504)).

On February 18, 2014, Irvine, through its attorney, filed a motion to dismiss Issue 13 because OAH lacks jurisdiction to hear and adjudicate disputes brought under Section 504. Irvine also requested that OAH strike Proposed Resolution 9 contained in Student's complaint and requested by Student as a remedy for the alleged violation of Student's Section 504 rights. No response or opposition has been received from Student.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

DISCUSSION

In this case, Student's Issue 13 alleges that Irvine discriminated against Student based on her disability in violation of Section 504. OAH does not have jurisdiction to hear claims brought under Section 504. Therefore, Irvine's motion to dismiss Issue 13 in Student's complaint is granted, and Proposed Resolution 9 requested by Student for the alleged violation of her Section 504 rights is stricken accordingly.

ORDER

1. Irvine's motion to dismiss Issue 13 and strike Proposed Resolution 9 relating to the alleged violations under Section 504 is granted.

2. The matter will proceed as scheduled as to the remaining 13 issues in Student's complaint.

IT IS SO ORDERED.

DATE: March 6, 2014

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings